



UNITED STATES DEPARTMENT OF TRANSPORTATION
Pipeline and Hazardous Materials Safety Administration

Hearing on
Examining Issues for Hazardous Materials Reauthorization

Before the Subcommittee on Railroads, Pipelines, and
Hazardous Materials
Committee on Transportation and Infrastructure
U.S. House of Representatives

Written Statement of
Cynthia L. Quarterman, Administrator

April 2, 2014

**WRITTEN STATEMENT
OF
CYNTHIA L. QUARTERMAN
ADMINISTRATOR
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION**

**BEFORE THE
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.**

EXAMINING ISSUES FOR HAZARDOUS MATERIALS REAUTHORIZATION

April 2, 2014

Mr. Chairman, Ranking Member Brown, and Members of the Subcommittee, thank you for inviting me to testify today on the Pipeline and Hazardous Materials Safety Administration's (PHMSA) progress in implementing title III of the Moving Ahead for Progress in the 21st Century Act, the Hazardous Materials Transportation Safety Improvement Act of 2012 (MAP-21). Enacted on July 6, 2012, MAP-21 provides the Agency with important new tools to bolster compliance with the hazardous materials laws and regulations and enhance emergency response capabilities.

Safety is PHMSA's number one priority. PHMSA works diligently to protect the American people and the environment from the risks of hazardous materials transportation. PHMSA achieves its safety mission through efforts to prevent and mitigate accidents by developing regulations, taking rigorous enforcement actions, collaborating with stakeholders, and educating emergency responders and the public. PHMSA's safety mission is guided by its vision that no harm results from hazardous materials transportation. We cannot accept death as an inevitable consequence of transporting hazardous materials, so we will work continuously to find new ways to reduce risk toward zero deaths, injuries, environmental and property damage, and transportation disruptions. The agency follows a Strategic Plan focused on reducing incidents and environmental consequences while maintaining a diverse workforce that will meet the Nation's long-term needs. MAP-21 aligns well with the agency's Strategic Plan and supports our agency's important safety initiatives.

Overview

MAP-21 authorized or mandated numerous rulemakings, reports, and programmatic changes for PHMSA's Hazardous Materials Safety Program. PHMSA finalized its strategy to implement the Act on August 31, 2012 and a supporting Action Plan on October 10, 2012. The Action Plan assigned responsible staff to 13 areas, covering 32 separate provisions. As a result, PHMSA has met or will meet established timelines for more than 90 percent of the 32 provisions. This is

significant given the many challenges and emerging issues that PHMSA has faced over the same period. The MAP-21 mandates are organized below into three categories:

1. Rulemakings;
2. Studies and Reports to Congress; and
3. Other Mandates, and Programmatic Changes.

Rulemakings

Update of Published Guidelines on Civil Penalty Amounts

MAP-21 removed the minimum penalty amount for a violation, except that the maximum penalty amount of \$450 was retained for a training violation. In addition, MAP-21 raised the maximum penalty amount for a knowing violation and a violation resulting in death, serious illness, or severe injury to any person or substantial destruction of property to \$75,000 and \$175,000, respectively. PHMSA adopted these changes in an April 17, 2013 final rule (78 Fed. Reg. 22798).

Open Package – Resumption of Transportation

MAP-21 required PHMSA to implement regulations by October 2013 to provide procedures for an agent of the Secretary of Transportation to open packages of perishable hazardous materials and to provide notification to the responsible party that an agent has performed a safety inspection or investigation. In addition, MAP-21 stressed that inspectors be provided appropriate training and equipment to open and close a packaging in accordance with the Hazardous Materials Regulations (HMR). The Department's enhanced inspection, investigation, and enforcement procedures were previously established through notice and comment rulemaking and thoroughly addressed the hazardous material transportation matters identified by Congress. PHMSA published a final rule (78 Fed. Reg. 60755) in October 2013 to codify changes to Federal hazardous materials transportation law and to ensure transparency and consistency for hazardous materials inspectors across all modes of transportation.

Failure to Pay Civil Penalties

MAP-21 directed PHMSA to issue regulations by October 2014 to require a person who is delinquent in paying civil penalties for violation of the hazardous materials transportation law or regulations to cease any activity regulated under the Federal hazardous materials transportation law until payment has been made or until an acceptable payment plan has been arranged. On September 24, 2013, PHMSA published a Notice of Proposed Rulemaking (NPRM) (78 Fed. Reg. 58501) addressing the MAP-21 mandate to prohibit hazardous materials operations by persons delinquent on payment of civil penalties. The comment period for the NPRM closed on November 25, 2013. The final rule is currently under review and is expected to be published by October 2014.

Standard Operating Procedures (SOPs) for Handling Applications for Special Permits (SPs) and Objective Criteria for Evaluating SPs

MAP-21 required PHMSA to issue regulations that establish (1) SOPs to support administration of the SP and approval programs, and (2) objective criteria to support the evaluation of SP and approval applications. Stakeholders have expressed an interest in resolving SP and approval processing concerns through rulemaking, commented on whether an applicant's fitness needs to be

assessed to perform a requested task, and suggested several alternatives. MAP-21 mandates a final rule by October 2014. PHMSA's NPRM is currently under Departmental review.

Incorporation of SPs into the HMR

MAP-21 required an initial review and analysis of SPs that have been in continuous effect for a 10-year period to determine which ones may be converted into the HMR. MAP-21 mandates a rule by October 2015.

Although, MAP-21 limited the review and analysis to SPs with a lifespan of greater than 10 years, PHMSA decided that an initial review and analysis of all active SPs would be more beneficial, as many SPs are interrelated. PHMSA's NPRM is currently under review and is expected to be published by October 2014.

Continued Incorporation of SPs

MAP-21 requires an ongoing review, analysis, and incorporation of SPs that are over 10 years old. Based on this review and analysis, PHMSA must either institute a rulemaking to incorporate the SPs into the HMR or publish in the *Federal Register* its justification for why the SPs are not appropriate for incorporation into the regulations. MAP-21 mandates a rule annually, beginning October 2016. As required by MAP-21, PHMSA plans to conduct future reviews of SPs with a lifespan of greater than 10 years on an annual basis. PHMSA's ongoing review and analysis of SPs will use the same methodology and tools as the initial NPRM, outlined above. However, in future reviews, PHMSA will only focus on SPs that are over 10 years old. PHMSA anticipates future analysis and review will be more streamlined due to the reduced volume of SPs to be evaluated. In the initial SPs incorporation NPRM, PHMSA plans to request comments and supporting documentation for SPs that are suitable for incorporation in future rulemakings.

Studies and Reports to Congress

Hazardous Materials Emergency Preparedness Grant Report

The Hazardous Materials Grants Program (HM Grants Program) was a key focus area of MAP-21. This HM Grants Program is comprised of three types of grants:

1. Hazardous Materials Emergency Preparedness (HMEP) Grant (\$21.8 million);
2. Hazardous Materials Instructor Training (HMIT) Grant (\$4 million); and
3. Supplemental Public Sector Training (SPST) Grant (\$1 million).

MAP-21 required PHMSA to submit a report to Congress by October 2013 providing a detailed accounting and description of the HMEP grant expenditures by each grant recipient, including the amount of, and purpose for, each expenditure. In addition, MAP-21 imposed a biennial reporting requirement on a State, political subdivision of a State, or Indian tribe that levies a fee in connection with the transportation of hazardous materials. In order to collect and report this information to Congress, PHMSA must receive approval to collect the necessary information in accordance the Paperwork Reduction Act (PRA) (44 U.S.C. §§ 3501-3521). Once PHMSA obtains authorization to collect the additional information, grantees will be asked to submit quarterly and final reports containing the requisite information. PHMSA published a 60-day *Federal Register* Notice on December 4, 2013 (78 Fed. Reg. 72972). PHMSA expects to publish the 30-day *Federal Register* Notice in April of 2014 in order to begin collecting the information during fiscal year

2015. The information collected during fiscal year 2015 will be reported on in the 2016 report to Congress.

Paperless Hazardous Materials Communication Pilot Program

MAP-21 authorized PHMSA to conduct pilot projects to evaluate the feasibility and effectiveness of using paperless hazard communications systems. If the pilot program is conducted, at least one pilot project must be in a rural area. In addition, PHMSA is not authorized to waive the current statutory shipping paper requirements and must consult with organizations representing fire and other emergency responders, law enforcement, and regulated entities. Upon the completion of the pilot program, a report to Congress is due by October 2014 covering the following: (1) a description and performance evaluation of each pilot project; (2) a safety and security assessment; (3) costs and benefits; and (4) a recommendation for incorporation into the HMR. Once PHMSA obtains authorization to collect the additional information, it will be authorized to initiate a pilot program. PHMSA published a 60-day *Federal Register* Notice on July 19, 2013 (78 FR 43263). PHMSA published the 30-day *Federal Register* Notice on November 25, 2013 (78 FR 70399). In preparation for Paperwork Reduction Act approval, PHMSA hosted a roundtable discussion with law enforcement and the emergency response community on March 13, 2014.

In a matter related to the paperless hazardous materials communication initiative, PHMSA issued an SP to UPS, Inc., on December 30, 2013 authorizing the electronic transfer of shipping paper information for certain low hazard shipments within their ground operation. As I have stated previously, we made it a priority to cut red tape and improve efficiency and moved expeditiously with this SP. Further, sharing hazardous materials information electronically will improve transportation efficiency without sacrificing public safety.

Improving Data Collection, Analysis, and Reporting

MAP-21 required PHMSA, in consultation with the United States Coast Guard to conduct an assessment to improve the collection, analysis, reporting, and use of data related to accidents and incidents involving the transportation of hazardous materials. MAP-21 further required PHMSA to review methods for collecting, analyzing, and reporting accidents and incidents involving the transportation of hazardous materials. Upon completion of the assessment and review, PHMSA was required to report to Congress on its plan and timeline for improving the collection, analysis, reporting, and use of data, including revising PHMSA databases, as appropriate. PHMSA reported its findings to Congress on September 3, 2013. PHMSA continues to implement its recommendations based on the availability of resources.

Other Mandates, and Programmatic Changes

Enhancing Emergency Response Preparedness, Response, and Training

As mentioned in the HMEP Grant Report discussion above, MAP-21 provided several provisions related to PHMSA's HM Grants Program. These changes came as PHMSA had already taken steps to enhance the program. Specifically, MAP-21 requires HMIT and SPST grants to be awarded through a competitive process. In addition, under MAP-21, PHMSA must ensure that HMEP and SPST grants are awarded to emergency responders that will have the ability to respond to effects of accidents or incidents involving the transportation of hazardous material in accordance with existing regulations or National Fire Protection Association (NFPA) standards. Further, SPST

grant agreements must specifically state that training courses shall comply with Federal regulations and national consensus standards for hazardous materials response.

As a result of our own initiatives and the MAP-21 provisions, PHMSA has increased its oversight of grantee training programs to ensure that responders and instructors trained under PHMSA hazardous materials grant programs will have the ability to protect nearby persons, property, and the environment from the effects of accidents or incidents involving the transportation of hazardous material in accordance with existing regulations or National Fire Protection Association standards.

PHMSA has and will continue to increase its outreach efforts to ensure that States, Native American Indian Tribes, Territories, and eligible non-profit organizations are aware of the MAP-21 program changes. This outreach will also serve to broaden the pool of applicants and ensure that stakeholders are aware that the HMIT and SPST grants are awarded competitively. PHMSA has created an online certification program that will require each HMEP and SPST grantee to certify during the application process that they will use the grant funding to train to the NFPA 472 standard.

Hazardous Material Enforcement Training

MAP-21 mandated that by April 2014, PHMSA must develop uniform performance standards for training hazardous materials inspectors and investigators on the following: (1) how to collect, analyze, and publish findings from inspections and investigations of accidents and incidents involving the transportation of hazardous materials; and (2) how to identify noncompliance with the HMR, and take appropriate enforcement action. These standards may provide the following: (1) guidelines for hazardous materials inspector and investigator qualifications; (2) best practices and standards for hazardous materials inspector and investigator training programs; and (3) standard protocols to coordinate investigation efforts among Federal, State, and local jurisdictions on accidents and incidents involving the transportation of hazardous materials. PHMSA's standards are in final review with its modal sister agencies and will be in place in April 2014. Once the standards are in place, we will evaluate the effectiveness of the standards in coordination with our other modal administrations.

Hazardous Material Technical Assessment, Research and Development, and Analysis Program

MAP-21 permitted PHMSA to develop and implement a hazardous material technical assessment, research and development, and analysis program. If PHMSA implements the program the agency must coordinate with other modal administrations and work cooperatively with regulated and other entities in the development and implementation of the program. On January 17, 2014, PHMSA hosted a research and development forum to discuss the program with regulated entities and our modal partners and solicit comments. The forum transcript has been posted to PHMSA's research and development website (<http://phmsa.dot.gov/initiatives/r-and-d>). The comment period for the research projects discussed at the forum closed on March 21, 2014. PHMSA is currently reviewing 11 comments received from our stakeholders. Though commenters are very supportive of our program, they do recommend changes to research activities involving liquefied petroleum gas odorization, anhydrous ammonia, and explosives. PHMSA will post the comments and responses to the research and development website.

Wetlines

MAP-21 required the Government Accountability Office (GAO) to evaluate and report on the safety of transporting flammable liquids in the external product piping of cargo tank motor vehicles (wetlines) by October 2013. PHMSA was prohibited from issuing a final rule regarding wetlines prior to the completion of GAO's evaluation. Per MAP-21, the GAO completed an audit on wetlines-related issues and published the final report on September 11, 2013. We are committed to working with our stakeholders to discuss safe solutions to the risks posed by wetlines.

Fiscal Year (FY) 2015 Budget Request

The FY 2015 President's Budget request of \$52 million for PHMSA's Hazardous Materials Safety Program would provide the resources necessary to actively protect the Nation's people and the environment from hazardous materials risks in transportation by air, rail, highway, and water corridors. The Budget also requests an increase of 3.0 full-time equivalent (FTEs), primarily to support Emergency Preparedness Information for Communities (EPIC) and research & development.

Of the total funding, \$40 million comes from the general fund and supports continued implementation of on-going efforts related to enforcement, outreach, risk management, working closely with NTSB to close safety recommendations, research and development and other comprehensive safety programs that reduce serious injuries and deaths resulting from hazardous materials incidents. An additional \$12 million is requested to be funded through special permit and approval fees. As discussed previously, PHMSA currently manages a significant number of special permits and approvals, and PHMSA anticipates that the costs associated with administering this program will progressively increase. PHMSA anticipates increased costs for the thorough engineering evaluations of each permit application from new package designs, the increasingly stringent monitoring of a company's fitness/competence to hold a special permit or approval, continuous evaluation of the technologies or materials subject to a special permit and accelerated incorporation of special permits in the HMR. The agency's proposed reauthorization will further PHMSA's mission through amendments to improve the effectiveness of the Hazardous Materials Emergency Preparedness Grants program, establish user fees for special permits, and facilitate the movement of essential hazmat during national emergencies or disasters. This budget request bolsters the resources available to the R&D program and establishes a reliable means of modern communication between PHMSA's hazmat program and emergency responders, the public, and the hazardous materials community.

Conclusion

Thank you, Mr. Chairman, for the opportunity to discuss PHMSA's implementation of MAP-21. We very much appreciate your partnership as we work together to safeguard people, property, and the environment from hazardous materials transportation risks.

